



IN THE  
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

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NO. 76-1847

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SHELBY COUNTY, TENNESSEE and THE MEMBERS  
OF THE SHELBY COUNTY QUARTERLY COURT,

Defendants-Appellants,

-VS-

STATE OF TENNESSEE, EX REL EDWARD B. PEEL,

Plaintiff-Appellee

ON APPEAL FROM THE SUPREME COURT  
OF THE STATE OF TENNESSEE

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MOTION TO DISMISS OR AFFIRM

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Edward B. Peel  
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

SHELBY COUNTY,  
TENNESSEE and THE  
MEMBERS OF THE  
SHELBY COUNTY  
QUARTERLY COURT,

Appellants, NO. 76-1847

-VS-

STATE OF  
TENNESSEE, EX REL  
EDWARD B. PEEL,

Appellee.

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MOTION TO DISMISS OR AFFIRM

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The Appellee moves the Court to dismiss the appeal herein or, in the alternative, to affirm the judgment of the Supreme Court of Tennessee on the ground that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

I

THE STATE CONSTITUTIONAL PROVISIONS AND  
STATUTES INVOLVED AND THE NATURE OF THE  
CASE

A. The Constitutional Provisions and  
Statutes

The appeal raises the question of the validity of Article VI, Section 15 of the Constitution of the State of Tennessee and Section 5-111 [Legislative Acts 1968 (Adj. S.) ch. 599; 1972 (Adj. S.) ch. 615] and Sections 19-102 and 19-103 [Legislative Acts 1968 (Adj. S.) ch. 599] of the Tennessee Code Annotated. Article VI, Section 15 provides in part that in justice of the peace districts in counties "(t)here shall be two Justices of the Peace...elected in each district by the qualified voters therein, except districts including County towns, which shall elect three Justices...." Following the opinion rendered in Hyden v. Baker, 286 F.Supp. 475 (1968), the 1968 Tennessee Legislature enacted Sections 5-111, 19-102 and 19-103 so as to comply with the rule set forth by this Court in Reynolds v. Sims, 377 U.S. 533, 84 S.Ct. 1362 (1964). Section 5-111 provides that prior to January 1, 1972, the county courts are "to apportion the justices of the peace among the districts substantially according to population, so as to provide for substantially the same number of persons per justice of the peace in each of the districts." Sections 19-102 and 19-103 restate the above constitutional provision.

## B. The Proceedings Below

The case was instituted in the Chancery Court of Shelby County, Tennessee by Appellee pursuant to Section 5-111 of the Tennessee Code Annotated, petitioning the Chancery Court to review the composition of the Quarterly Court of Shelby County, Tennessee in view of the holding in State Ex Rel. Jones v. Washington County, 514 S.W. 2d 51 (1974). Appellee alleged the Quarterly Court to be in violation of "applicable Tennessee law" and cited specifically Article VI, Section 15 of the Constitution of the State of Tennessee and Sections 5-111, 19-102 and 19-103 of the Tennessee Code Annotated and the court's application thereof in State Ex Rel. Jones v. Washington County. A final decree was made and entered on December 3, 1975 wherein the Chancery Court ruled that the composition of the Shelby County Quarterly Court was in violation of Article VI, Section 15 of the Constitution of the State of Tennessee and Section 19-102 of the Tennessee Code Annotated. This decision was affirmed by the Western Section Court of Appeals of Tennessee by decree filed January 11, 1977, wherein the Court of Appeals ruled that the present Quarterly Court was in violation of Article VI, Section 15 of the Constitution of the State of Tennessee and Sections 19-102 and 19-103 of the Tennessee Code Annotated. Certiorari was denied by the Supreme Court of Tennessee on March 28, 1977, whereupon Appellants filed this appeal.

## II

### ARGUMENT

The Case Presents No Substantial Federal Question

Appellants assert that the technical and legal effect of the decision of the three-judge Federal District Court (by a two to one vote) in Hyden v. Baker, created a permanent and unchanging power in the Shelby County Quarterly Court which is not subject to the Constitution of the State of Tennessee nor any subsequent enactment of the legislative power of the State of Tennessee. The controversy decided in 1968 involved Section 19-101 [which has since been repealed by Legislative Acts 1968 (Adj. S.), ch. 599] and a conflict with the federal "one man, one vote" principle set forth in Reynolds v. Sims. This case involves the improper apportionment of Shelby County in the years subsequent to the 1968 decision of Hyden v. Baker. This case involves the failure of Appellants to follow Sections 5-111, 19-102 and 19-103 of the Tennessee Code Annotated and Article VI, Section 15 of the Constitution of the State of Tennessee in that eleven justice of the peace districts have been created with only one justice of the peace being elected from each district; four districts comprising the county as a whole where justices of the peace are elected at large; and an unequal number of persons per justice in each district.

In State Ex Rel Jones v. Washington County, the Tennessee Supreme Court, in affirming the decision of the Court of Appeals, Western Division, held that the election of justices of the peace at large is impliedly forbidden by Tennessee law and that the counties of Tennessee can be and should be apportioned to meet the requirements of both federal and state law. This proposition was accepted in the recent unreported decision of the United States District Court for the Western District of Tennessee, Eastern Division in Seals et al v. The Quarterly Court of Madison County Tennessee et al, USDC, W.D. Tenn. No. C-2106-E, decided on April 9, 1976. See also Seals v. Quarterly Court of Madison County, 526 F.2d 216 (6th Cir. 1975).

The decision below was not made in terms of a federal question, but was based simply on state law grounds.

### III

### CONCLUSION

Wherefore, Appellee respectfully submits that the questions upon which this cause depend are so unsubstantial as not to need further argument, and Appellee respectfully moves the Court

to dismiss this appeal or in the alternative, to affirm the judgment entered in the cause by the Supreme Court of Tennessee.

Respectfully Submitted,

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Edward B. Peel  
Counsel for Appellee

### CERTIFICATE OF SERVICE

I, Edward B. Peel, Counsel for Appellee herein, do hereby certify that three copies of the foregoing Motion to Dismiss or Affirm have been forwarded, via air mail postage prepaid, to C. Cleveland Drennon, Jr., Counsel for Appellants, Room 1109, 160 No. Main Street, Memphis, Tennessee 38103, pursuant to Rule 33(1), Rules of the Supreme Court of the United States, this 22nd day of September 1977.

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Edward B. Peel